

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 1582 - SB 1567

March 27, 2011

SUMMARY OF BILL: Lawful Presence Enforcement Act: Prohibits state or local government entities from limiting or restricting the enforcement of federal immigration laws to less than the full extent permitted by federal law. Creates the Lawful Immigration Enforcement Fund. Authorizes the assessment of a civil penalty between \$500 and \$5,000 against state or local governments for noncompliance with enforcement requirements. Requires any law enforcement officer acting in the enforcement of any state law or local ordinance that makes a lawful stop or detention of a person for violation of the law or ordinance, and the officer has reasonable suspicion to believe the person is unlawfully present in the United States, the officer shall request verification of the immigration status of such person from federal immigration authorities if the verification would not hinder or obstruct an investigation or treatment of a medical emergency. Creates a presumption of lawful presence with the provision of certain forms of identification. Authorizes the transfer of unauthorized aliens to federal facilities in or outside the state. Requires the Peace Officer Standards and Training (POST) Commission to establish a curriculum for law enforcement regarding best practices for determination of immigration status of a person lawfully stopped, arrested, or detained. Requires the POST Commission to implement the bill without additional resources. Creates a presumption of flight risk for persons determined to be in the United States illegally.

Lawful Employment Act: Requires public and private employers to enroll in the federal E-verify program and verify the immigration status of all employees hired after October 1, 2011. Requires the Department of Labor and Workforce Development to establish an Office of Employment Verification Assistance to help employers without internet access to verify employees; authorizes the Department to hire no more than one person to staff the Office. Prohibits the employment of unauthorized aliens. The penalty for a first violation is a \$1,000 civil penalty and suspension of all applicable licenses for 30 days; for a second violation, a \$1,000 civil penalty and license suspension for one year; for a third violation, a \$1,000 civil penalty and permanent revocation of all licenses. Authorizes the Commissioner of the Department to issue a warning in lieu of penalties if the employer remedies the violation within 30 days or if a determination is made that the violation was unintentional. Requires the Department to investigate complaints regarding violations. Requires the Department to develop a random auditing program to investigate employers. Requires the Department to list publicly on its website, a list of employers in violation. Requires proof of E-verify enrollment prior to any private employer receiving economic development incentives. Creates the Lawful Employment Enforcement Fund, to which all penalties collected pursuant to this bill will be deposited, and from which funds will be used to administer the provisions of this bill.

Eligibility Verification for Entitlements Act: Requires the verification of citizenship or lawful presence for applicants of public benefits who are 18 years of age and older, except when

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exempted by federal law. Requires certain forms of identification for citizens to receive benefits; requires agencies to verify the status of citizens with the agency issuing the identification. Requires agencies to check the immigration status, using the systematic alien verification for entitlements (SAVE) program, of an applicant claiming in an affidavit to be a qualified alien. Requires agencies to maintain all documentation for three years. Applicants who knowingly make fraudulent claims in the affidavit are liable under the False Claims Act. Requires the Comptroller of the Treasury to provide guidance and conduct reviews of state and local agency use of the SAVE system.

ESTIMATED FISCAL IMPACT:

Increase State Revenue –

\$5,000/Recurring/Lawful Employment Enforcement Fund

Increase State Expenditures –

\$9,478,300/FY11-12/General Fund

\$7,884,900/FY12-13 and Subsequent Years /General Fund

\$5,000/Recurring/Lawful Employment Enforcement Fund

\$60,700/FY11-12/Environmental Protection Fund

\$57,100/FY12-13/Environmental Protection Fund

Increase Local Revenue – \$100,000/Recurring

Increase Local Expenditures – Exceeds \$1,961,600/FY11-12*

\$961,600/FY12-13 and Subsequent Years*

Other Fiscal Impact – There will be a decrease in state expenditures resulting from unauthorized aliens no longer receiving certain benefits. A portion of the decrease in state expenditures on unauthorized aliens will be offset by an increase in state expenditures on citizens and qualified aliens. Based on available information, the precise amount of the decrease in state expenditures on unauthorized aliens and the increase in expenditures on citizens and qualified aliens cannot be reasonably determined.

Assumptions applied to the Lawful Presence Enforcement Act:

- Local governments may be assessed a civil penalty between \$500 and \$5,000 per day for noncompliance with the provisions of this bill. Due to the severity of the penalty for noncompliance, all local governments are expected to comply with the provisions of this bill. As a result, any increase in state revenue from civil penalties will be not significant.
- According to the Administrative Office of the Courts, any increase in caseloads can be handled within existing resources without an increased appropriation or reduced reversion.
- According to the Tennessee Wildlife Resources Agency (TWRA), in 2010, 26 persons were transported in Davidson County for lack of documentation of status. TWRA estimates that number to be 286 statewide. According to TWRA, the Agency only

transports individuals to a booking facility if they cannot produce any form of identification including pay stubs, rent receipts, or other documents. The requirement to produce certain forms of identification will more than double the number of transports. TWRA vehicles are not equipped for transport and therefore require two officers per transport. On average, each arrest and transport takes two officers approximately three hours. A minimum additional 286 transports will result in an additional 1,716 officer hours (2 officers x 3 hours x 286 transports). TWRA will require one additional officer at a recurring cost of \$65,929 (\$39,230 salary + \$16,699 benefits + \$10,000 operational).

- According to the Department of Safety (DOS), there are currently 12 positions within the Criminal Investigations Division (CID) that assist with the enforcement of Immigration and Customs Enforcement (ICE) laws.
- DOS assists county and municipal agencies and also assists in the transportation of undocumented aliens to federally approved detention facilities. Citizens of Tennessee are also able to alert DOS of undocumented aliens living and working in Tennessee.
- According to DOS, the minimum processing time for an undocumented alien is four hours. Children of undocumented aliens must be taken to separate facilities for processing. According to DOS, the closest authorized facility for processing children of undocumented aliens is located in Atlanta, Georgia. A minimum additional 24 CID agents will be required to carry out the provisions of this bill.
- One-time state expenditures for new CID agents will be \$1,118,400 (24 agents x \$46,600 patrol car, computer, radios, cameras, and other supplies).
- Recurring expenditures for 24 new CID agents will be \$1,762,296 [(\$38,100 salary + \$15,529 benefits + \$19,800 vehicle maintenance, travel, equipment) x 24].
- The POST Commission will require at least one additional meeting and one rulemaking hearing. The bill directs the Commission to implement the requirements within existing resources. Directing an agency to use existing resources to perform a new function does not eliminate the fiscal impact of performing the new function since a new function that has a cost will reduce the agency's reversion or will require creation of additional position to perform duties of staff who have been redirected to the new function.
- The Commission indicates this would impact the ability to conduct regular business and would require a one-time increase in state expenditures of \$19,200 to reimburse members for travel expenses for additional meetings.
- Based on information from the Davidson County Sheriff's Office regarding the current 287(g) program currently in place, 2,681 persons were issued citations each year and found to be unauthorized aliens. Based on U.S. Census information, approximately 36 percent of foreign-born people in Tennessee live in Davidson County. Approximately 7,447 individuals will be issued citations and found to be unauthorized aliens (2,681 / 36%); an additional 4,766 (7,447 – 2,681) unauthorized aliens.
- Based on information provided by the Comptroller of the Treasury, an additional 7,447 unauthorized aliens who are issued citations statewide each year will be detained. The average time for local police to process an undocumented alien is three hours. It will take 14,298 (4,766 x 3) additional hours to process 7,447 undocumented aliens each year. The average officer salary is \$32.50 per hour. An increase in recurring local government expenditures of \$464,685 (14,298 hours x \$32.50) to handle the increased workload.

- According to the Department of Corrections, there will be no significant fiscal impact on the Department. The number of unauthorized aliens convicted of a felony will not change.
- Local governments are not authorized to transport offenders to federal facilities. Offenders will be detained until ICE agents can pick up and transport individuals.
- ICE has 48 hours to transport an unauthorized alien to a federal facility after placing a detainer on that person. Local governments will pay incarceration costs of \$417,978 per year ($4,766 \times 2 \text{ days} \times \43.85 per day) for the time it takes federal authorities to pick up detainees.
- The presumption of flight risk will increase the amount bail required for an unauthorized alien to be released when charged with criminal offenses and awaiting trial. At least ten additional defendants will be held in local jails for failure to make bail for 180 days while awaiting trial. The recurring increase in local government expenditures will be \$78,930 ($180 \text{ days} \times 10 \times \43.85 per day).
- For persons convicted of a felony or second misdemeanor, local governments are authorized file for reimbursement from the U.S. Department of Justice for a share of correctional officer costs. Total appropriations are prorated among all eligible claims. The precise amount reimbursed to local governments cannot be reasonably determined due to multiple unknown factors. It is estimated that local governments will be reimbursed for up to \$100,000 of correctional officer costs.
- The total impact for local governments to process and detain unauthorized aliens will be a recurring increase in local government expenditures of \$961,593 ($\$417,978 + \$464,685 + \$78,930$). Local government revenue from the U.S. Department of Justice will increase \$100,000.
- According to the Comptroller, based on information from the Tennessee Association of Law Enforcement Officers, the first-year training cost for local law enforcement will exceed \$1,000,000.

Assumptions applied to the Lawful Employment Act:

- The Commissioner is authorized to issue warnings in lieu of penalties if the violation was unintentional or the violation is remedied within 30 days. Most employers will remedy violations to prevent the paying of civil penalties and the suspension or revocation of licenses. An average of five civil penalties of \$1,000 for a total increase in recurring state revenue of \$5,000.
- According to the Department of Revenue, any impact on economic development incentives will be not significant; employers will not risk the loss of funds.
- E-verify is free of charge to employers.
- Any increase in expenditures for state or local government to verify new employees hired after October 1, 2011, will be not significant.
- One staff member, as authorized by the bill, to run the Office of Employment Verification Assistance will increase recurring state expenditures by \$53,599 ($\$32,910 \text{ salary} + \$14,429 \text{ benefits} + \$6,260 \text{ supplies, operational}$). One-time state expenditures for this position will be \$6,000 (office supplies, computer, software, and equipment).

- The Department of Labor and Workforce Development will hire three inspectors to carry out the investigations. Total recurring state expenditures for the inspectors will be \$175,000 (\$102,850 salaries + \$39,980 benefits + \$32,170 travel, supplies, operational). One-time expenditures for these positions will be \$18,510 (office supplies, computer, software, and equipment).
- Recurring state expenditures for the supervising inspector will be \$63,503 (\$38,500 salary + \$14,278 benefits + \$10,725 travel, supplies, operational). One-time expenditures for this position will be \$6,170 (office supplies, computer, software, and equipment).
- Total one-time expenditures will be \$30,680 (\$6,000 + \$18,510 + \$6,170).
- Total recurring expenditures will be \$292,102 (\$53,599 + \$175,000 + \$63,503); any available amount will be paid from the Lawful Employment Enforcement Fund, the remaining amount will be paid for from the General Fund.

Assumptions applied to the Eligibility Verification for Entitlements Act:

- In order for a person to violate the False Claims Act by filing a fraudulent affidavit, the individual would be an unauthorized alien claiming to have qualified presence. Revenue from civil penalties assessed on this group will be not significant.
- According to the U.S. Department of Homeland Security, access to the SAVE program requires a minimum \$25 per month service charge and \$0.50 per electronic verification.
- According to the Bureau of TennCare, benefits eligibility verification must comply with federal law; therefore, there will be no impact on the Bureau of TennCare.
- According to the Department of Intellectual and Developmental Disabilities, federal law requires citizenship to receive the benefits administered by the Department. The additional requirements for verification can be handled within existing resources. Access to SAVE will increase expenditures to the Department, reducing available funds by \$300 per year. Verification of 500 applicants submitting affidavits claiming qualified alien residence would increase state expenditures by \$250 (500 x \$0.50). Total expenditures will be \$550 per year.
- According to the Department of Mental Health (DMH), there are approximately 1,700 facilities statewide that provide some form of assistance. According to the Department, there were 13,770 admissions including 8,249 unduplicated individual adults admitted to five Regional Mental Health Institutes (RMHI) in 2010. One additional staff person would be required at each of the five facilities to verify the eligibility of patients. Therefore, a recurring increase in state expenditures of \$250,670 (\$164,550 salary + \$65,084 benefits + \$21,036 operational).
- RMHIs will provide emergency medical services to individuals prior to verification of eligibility. Any decrease in state expenditures from no longer treating an unauthorized alien after the 72-hour emergency period will be not significant.
- Access to SAVE and verification of qualified aliens will increase recurring expenditures to DMH by \$4,000 per year.
- According to the Department of Human Services (DHS), all federal programs administered by the Department have citizenship requirements. The level of verification

of citizenship is determined by the federal government as a condition of receiving federal funding for most programs; there will be no impact on those programs.

- According to DHS, the Food Stamp program, Child and Adult Care Food Program, and the Summer Food Service Program will be exempted from the requirements of this bill.
- DHS contracts with local governments to operate the Low Income Home Energy Assistance Program, the Weatherization Program, the Community Services Block Grant Program, and Social Services Block Grant Homemaker Program. Personnel costs along with costs to access SAVE and verify applicants will increase state expenditures by \$469,400 per year. Any funds which have been utilized for providing services to unauthorized aliens will be used for assistance of individuals who have been wait-listed for benefits.
- The Department of Health (DOH) will require an additional Public Health Office Assistant position in each of the 89 rural county offices to verify identification and verify status in SAVE and one Administrative Assistant position in the central office (90 total positions). The total increase in recurring state expenditures will be \$4,103,279 (\$2,417,754 salary + \$1,171,025 benefits + \$514,500 operational). One-time costs associated with these positions will be \$395,719.
- The number of verifications using the SAVE program required by DOH to check the status of individuals claiming to be qualified aliens will exceed \$75,000 per year.
- DOH also contracts for services with six metro health offices. There will be 6 additional positions to provide verification and determination of qualified individuals which is estimated to increase recurring state expenditures by \$333,500.
- The total recurring increase in expenditures for DOH will be \$4,511,779 (\$4,103,279 + \$75,000 + \$333,500).
- DOH will continue certain treatments including vaccinations and treatment of communicable diseases that pose a threat to the general population of the state regardless of alien status.
- The Department of Environment and Conservation (TDEC) will require an additional Administrative Assistant position to verify status of license applicants. An increase in recurring state expenditures from the Environmental Protection Fund (EPF) of \$56,631 (\$32,250 salary + \$12,981 benefits + \$11,400 operational). One-time state expenditures from the EPF related to the position will be \$3,600. TDEC estimates 360 qualified aliens will require a verification using SAVE resulting in a recurring increase in state expenditures of \$480 from the EPF per year [$\$300 + (360 \times \$0.50)$].
- According to the Department of Labor and Workforce Development, the Department already routinely performs verifications through the SAVE program. No decrease in state expenditures associated with unauthorized aliens no longer receiving benefits. One additional Clerk 3 position and one additional Data Entry Operator position will be required to verify authorized forms of identification with issuing agencies and record approximately 500,000 applicants each year. The recurring increase in state expenditures for these positions will be \$85,363 (\$44,206 salaries + \$21,157 benefits + \$20,000 operational). One-time costs associated with these positions will be \$6,000.
- According to the Department of Commerce and Insurance, approximately 53,000 applicants for licenses will have to be verified. Five additional licensing technician positions will be required resulting in a recurring increase in state expenditures of \$220,533 (\$139,500 salaries + \$59,433 benefits + \$21,600 operational). One-time costs

associated with these positions will be \$23,400. A recurring increase in state expenditures of \$1,625 [$\$300 + (2,650 \times \$0.50)$] to verify eligibility of 2,650 qualified aliens using SAVE.

- The Comptroller of the Treasury will require three additional auditor positions to verify participation in the SAVE program. A recurring increase in state expenditures of \$225,710 (\$170,474 salary + \$55,236 benefits).
- Total one-time expenditures from the General Fund will be \$425,119 (\$395,719 + \$6,000 + \$23,400).
- The total recurring increase in state expenditures to the General Fund will be \$5,769,630 ($\$550 + \$250,670 + \$4,000 + \$469,400 + \$4,511,779 + \$85,363 + \$220,533 + \$1,625 + \$225,710$).

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

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